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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,757	12/21/2001	Steven J. Bartle	ADM-0012-00	1651
26111	7590	02/18/2004	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			SAYALA, CHHAYA-D	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/025,757

**Applicant(s)**

BARTLE ET AL.

**Examiner**

C. SAYALA

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

Art Unit: 1761

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 9, 10, 34, 43, and 44, "low" is of indeterminate scope. It remains undefined in the specification and it is impossible to fathom what this represents.

In claim 22, line 2, it is unclear what "unclassified" soy flour can be, as opposed to "classified" soy flour.

In claim 39, line 2, a "loss-in-weight" feeder has not been defined in the specification, and it is not clear what type of a feeder this is. A search of the prior art does not indicate that this type of feeder is defined in this art, that is, in animal feed.

In claim 9, it is unclear whether the crude protein, starch and crude fiber are in addition to claim 1 elements, since no protein, crude fiber or starch are mentioned in claim 1.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1761

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 59 is rejected under 35 U.S.C. 102(b) as being anticipated by Schroeder et al. (US Patent 54431675).

Applicants' claim is written in product-by-process format and as such, it is the novelty of the instantly claimed product that need be established and not that of the recited process steps. In re Brown, 173 USPQ 685 (CCPA 1972); In re Wertheim, 191 USPQ (CCPA 1976). When the prior art discloses a product that reasonably appears to be either identical with or only slightly different than the product claimed in this product-by-process claim, the burden is on the applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of prior art. In re Brown, 459 F2d 531, 173 USPQ 685 (CCPA 1972); In re Fessman, 489 F2d 742, 180 USPQ 323 and 324 (CCPA 1974); In re Marosi, 710 F2d 799, 218 USPQ 195 (Fed Cir. 1983).

The rejection is being made under both statutes and the burden is being shifted to the applicant to show that there is patentable difference between the reference and the claimed invention, since the Office is not equipped to manufacture the two products and make comparisons as to solids contents or the pH of a 10% aqueous solution. See *In re Swinehart*, 439 F.2d 210, 169 USPQ 226, (CCPA 1971); *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1761

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder et al (US Patent 4431675) in view of Moechnig et al (US Patent 5935626) and further in view of Harris et al (US Patent 6168803).

Schroeder et al. teaches a hard solid feed that contains a sugar solution derived from condensed solubles, cane molasses, beet molasses, condensed whey (col. 3), and calcium oxide or magnesium oxide, 2-15% (col. 4 or col. 5). Note that water content in the sugar solution is given as from 5 to about 30 wt% (col.3, lines 6-7). Note also that col. 2 and Table 1 includes minerals. At col. 6, Schroeder et al. teach the fat ingredient, up to about 30 wt%. Sources of fat include acidulated soapstock. Other ingredients also disclosed: urea, biuret, soybean meal, fiber (col. 7), and ground grains, which would, in and of themselves contain starch. Schroeder et al. thus teach that the ingredients claimed instantly, in various permutations and combinations that result in 58 claims, have been established as known and used in the preparation of feed blocks. The patent does not disclose soy flour, but discloses soy meal. The patent teaches mixing the ingredients produces an exothermic reaction, but it does not teach the temperature actually reached (instant claim 35) nor the density (claim 38), although by virtue of the fact that the patent teaches similar ingredients and in fact, all of them, then there must be a similarity in density. In any event, the office is not equipped to

Art Unit: 1761

manufacture prior art products and measure such physical limitations to make comparisons, and therefore, this is being held obvious over the patent disclosure, for the above reasons. The patent does not teach dispensing in a "loss-in-weight" feeder, although, barring any evidence to the contrary, dispensing into any feeder that fulfills the same function, known in the art, would have been obvious. The patent does not teach that the block is contained in a tub, although at the time the invention was made, it was obvious to use even cardboard containers (see col. 1).

Moechnig et al. teach essentially the same ingredients (example 1) and state that the different forms that this composition can be formed into are tubs, blocks, pellets and cubes. Because such prior art references such as Moechnig et al establish that such forms were known and were obvious over each other, it would have been obvious to one of ordinary skill in the art to form either blocks or tubs of the composition.

Harris et al. teach a feed supplement in blocks that contain similar ingredients. Harris et al use grain flour, such as soy flour, MgO, condensed solubles, wheat midds etc. (see col. 5). The list is comprehensive and teaches all the materials that have been used in prior art to form feed blocks. Urea and biuret are also shown. The alkaline earth oxide used in an art between 2-10 wt%. The method of making is outlined at col. 7. The patent states that heating, curing and time, pressure and composition "can all be varied to control hardness as a means of consumption regulation" (see col. 7, lines 44 + in Harrison et al). It would have been obvious to modify Schroeder et al.'s feed block with the teachings of Harris et al, which provide an exhaustive description of prior art

Art Unit: 1761

ingredients and methods for making a feed block using similar materials including a high fat content to about 20 wt%, obtained from acidulated soapstock.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



C. SAYALA  
Primary Examiner  
Group 1700.